

Application No.: 10/758,966
Office Action Mailed On: September 7, 2006
Response to Office Action Dated: December 7, 2006
Attorney Docket No.: F125

RECEIVED
CENTRAL FAX CENTER
DEC 07 2006

Amendments to the Drawings:

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the reference sign 50 that was mentioned on page 15 of the specification. The drawings are further objected to because figure 12 includes the reference characters 43 and 62 that are not mentioned in the specification.

Applicants have attached corrected drawing sheets in compliance with 37 CFR 1.121(d). Further, page 15 of the specification has been revised to remove reference sign 50. Applicants request that the Examiner withdraw the objections to the drawings.

Best Available Copy

Application No.: 10/758,966
Office Action Mailed On: September 7, 2006
Response to Office Action Dated: December 7, 2006
Attorney Docket No.: F125

RECEIVED
CENTRAL FAX CENTER
DEC 07 2006

Remarks/Arguments

Claims 1-22 are in the application. Claims 1 and 13 are in independent form.

Drawing Objections

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the reference sign 50 that was mentioned on page 15 of the specification. The drawings are further objected to because figure 12 includes the reference characters 43 and 62 that are not mentioned in the specification.

Applicants have attached corrected drawing sheets in compliance with 37 CFR 1.121(d). Further, page 15 of the specification has been revised to remove reference sign 50. Applicants request that the Examiner withdraw the objections to the drawings.

Double Patenting Rejections

Claims 1-3, 13-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 23-25 of copending Application No. 10/664,247.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

As noted by the Examiner, a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Upon the indication that all objections and rejections have been withdrawn, applicants will submit a terminal disclaimer to overcome the double patenting rejection.

Claim Rejections – 35 USC § 102

Claims 1-3, 6-8, 10-19, 21 and 22 are rejected under 35 USC 102(e) as being anticipated by US Patent Application Publication 20030047691 of Musil et al (“Musil”).

Application No.: 10/758,966
Office Action Mailed On: September 7, 2006
Response to Office Action Dated: December 7, 2006
Attorney Docket No.: F125

Claims 1-22 are rejected under 35 USC 102(e) as being clearly anticipated by US Patent Application Publication 20040151991 of Stewart et al ("Stewart").

Applicants submit that 35 U.S.C. 103 (c) provides:

(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

The current application 10/758,966, the Musil patent application publication 20030047691, and the Stewart patent application publication 20040151991 were, at the time the invention was made, owned by FEI Company, the assignee of the present invention.

Applicants request that the Examiner withdraw the rejections under 35 USC 102(e) as being anticipated by Musil for claims 1-3, 6-8, 10-19, 21 and 22. Applicants further request that the Examiner withdraw the rejections under 35 USC 102(e) as being anticipated by Stewart for claims 1-22.

Best Available Copy

Application No.: 10/758,966
Office Action Mailed On: September 7, 2006
Response to Office Action Dated: December 7, 2006
Attorney Docket No.: F125

Applicants, therefore, request that a timely Notice of Allowance be issued in this application.

Respectfully submitted,

Date: 12/7/06

By: David Griner

David Griner
Patent Reg. No. 47,614
P.O. Box 164140
Austin, Texas 78716-4140
Tel: (512) 476-0005
Fax: (512) 476-1513